IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.795/2006

Reserved on.12.6.2007

Decided on. 20.7. 2007

Rama Nand **…Petitioner.**

Versus

State of H.P. & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : **Mr. R.S. Dhaulta, Advocate**

For the respondents **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Dy. A.Gs.**

Rajiv Sharma, J.

A challenge has been laid by the petitioner to the order dated 9.5.2006 passed by the Financial Commissioner (Appeals) H.P. in revision petition No. 302 of 1997.

The brief facts necessary for the adjudication of this petition are that the petitioner had applied for the grant of Nautor land measuring 6-12 bighas out of khasra No. 62 in Chak Bhawana, Gram Panchayat Purag Tehsil Kotkhai, District Shimla in the year 1960. He was called upon by the Gram Panchayat Purag to apply for another vacant land in the same Gram Panchayat and resolution to this effect was passed by the Gram Panchayat on 13.7.1964. The Patwari Halqua gave tatima to him of land comprising khasra No. 1806/170/2 measuring 11-13 bighas situate in Chak Purag, Tehsil Kotkhai, District Shimla. The case of the petitioner

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

was processed for the grant of Nautor land on the basis of the tatima of the land bearing khasra No. 1806/170/2 situate in Chak Purag. After going through the codal formalities, Nautor file was sent to the Deputy Commissioner, Shimla for creation of demand. The fire broke out in the office of the Deputy Commissioner in the year 1972 and the Nautor file was also destroyed. The revenue agency re-constructed the Nautor file on the basis of the record available in the office of Tehsildar Kotkhai and SDO (Civil) Theog. The patta was sanctioned in favour of the petitioner of the land comprised in khasra No. 1806/170/2 measuring 11-13 bighas situate in Chak Purag, Tehsil Kotkhai, District Shimla, H.P. by the Deputy Commissioner on 3.10.1973. It is averred by the petitioner that he was put in possession of the land and had planted 300 plants of apple and more than 100 plants of almond and plum.

It appears that one Shri Hari Krishan Justa filed an appeal under Rule 28 of the H.P. Nautor Rules, 1968 before the Deputy Commissioner, Shimla on 5.9.1974. The Deputy Commissioner, Shimla vide letter dated 19.7.1974 directed the Naib Tehsildar to sent a report regarding the Nautor sanction to him. The Naib Tehsildar sent a letter dated 7.3.1975 to the Deputy Commissioner, Shimla. The appeal was dismissed by the Deputy Commissioner on 15.5.1975 after the receipt of the report from the field agency. Mr. Hari Krishan Justa preferred a review petition but the same was dismissed in default on 27.11.1975. Mr. Hari Krishan Justa filed an application before the Deputy Commissioner, Shimla on 22.4.1976 for resumption of land under Rule 12 (g) of the H.P. Nautor Rules, 1968. The Deputy Commissioner got the matter inquired through the SDO (Civil), Theog, who submitted the report on 3.12.1977. The Deputy Commissioner referred the matter to the Divisional Commissioner, Shimla on 11.9.1979. The matter was referred to the State Government by the

Divisional Commissioner on 2.11.1979 for resumption of grant to the petitioner under Rule 12 (g) of the H.P. Nautor Rules, 1968. The Revenue Department vide letter dated 6.3.1980 advised the authorities that since patta contained an arbitration clause, the resumption of the grant of Nautor land under rule 12 (g) of the H.P. Nautor Rules, 1968 was not applicable and thereafter the Deputy Commissioner recommended the revision to the Financial Commissioner on 31.3.1982. The Financial Commissioner accepted the revision and rejected the sanction and directed the SDO (Civil), Theog to take fresh decision. The petitioner filed CWP No. 284/84 before this Court challenging the issuance of order dated 24.4.1982 issued by the Financial Commissioner. The writ petition was dismissed by this Court on 15.5.1994. The SDO (Civil), Theog made an inquiry in the matter and rejected the application for the grant of Nautor vide order dated 20.12.1994 and submitted the file for resumption of grant to the Deputy Commissioner, Shimla. The petitioner filed an appeal before the Deputy Commissioner, which was rejected by him on 31.3.1997. The petitioner filed an appeal under Rule 28 of the H.P. Nautor Rules, 1968 before the Commissioner, Shimla Division. The appeal was dismissed by the Commissioner, Shimla Division on 13.10.1997. He preferred a revision petition before the Financial Commissioner against the order of the Commissioner. The revision petition was dismissed by the Financial Commissioner vide order dated 9.5.2006.

Mr. R.S. Dhaulta, Advocate had strenuously argued that the order dated 9.5.2006 passed by the Financial Commissioner is not sustainable.

The learned Advocate General had supported the order dated 9.5.2006.

I have heard the learned counsel for the parties and perused the record.

Mr. R.S. Dhaulta, Advocate had argued that his client though had submitted an application for grant of Nautor land in Chak Bhawna, Gram Panchayat Purag but since the land i.e. khasra No. 62 was in illegal occupation of one Sh. Shyama Nand, he applied for the grant of Nautor land in Chak Purag in khasra No. 1806/170/2 measuring 11-13 bighas. He further contended that on the basis of the report received from the field agency, the Deputy Commissioner had sanctioned the Nautor in favour of his client on 13.10.1973 and he had raised orchard on the land granted to him. He had further submitted that his client falls within the description of 'resident' as per sub rule (D) of Rule 3 of the H.P. Nautor Rules, 1968 since his client has purchased land in Chak Purag in the year 1970. He had also relied upon the definition of the word land owner as per the provisions of the H.P. Land Revenue Act, 1954 and on that basis submitted that petitioner was not holding 18-18 bighas of land in Chak Bhawna but was non-occupancy tentant of land measuring15-16 bighas. He had also drawn the attention of the Court to Annexure P-14 whereby in the list of Nautor date mentioned is 25.10.1971. The petitioner was holding land as a non-occupancy tenant of land measuring 15-16 bighas in Chak Bhawna, he could not have been treated as owner of the land. The word owner has specifically been defined under the H.P. Land Revenue Act, 1954. The Financial Commissioner had discussed in his order that the petitioner had purchased land measuring 0-4 biswas on 6.6.1970. The petitioner has been granted Nautor land on 13.10.1973 and on that date he was holding 0-4 biswas of land in Chak Purag. Thus the Financial Commissioner had wrongly taken into consideration the land which was in possession of the petitioner as non-occupancy tenant in

Chak Bhawna while passing the order dated 9.5.2006. The tenant could not be treated as owner as has been done by the Financial Commissioner. The Annexure P-14 is dated 25th October, 1971 and the fire had broken in the office of the Deputy Commissioner in the year 1972. The file was reconstructed by the revenue authorities and ultimately the land was sanctioned in favour of the petitioner on 3.10.1973.

The upshot of the above discussion is that the petitioner falls within the description of resident as per sub rule (D) of Rule 3 of the H.P. Nautor Rules, 1968 since he was owner of land measuring 0-4 biswas in revenue estate Purag. The land of the petitioner measuring 15-16 bighas could not have been taken into consideration by the Financial Commissioner since the same was in occupation of the petitioner as non-occupancy tenant and not as owner. The entry has been made in Annexure P-14 and the date mentioned is 25.10.1971 and the fire broke in the office of the Deputy Commissioner in the year 1972 and the file thereafter was re-constructed and ultimately the grant of Nautor was made in favour of the petitioner on 3.10.1973. He has raised orchard on the land allotted to him.

Accordingly the writ petition is allowed. The order dated 9.5.2006 passed by the Financial Commissioner (Appeals) H.P. is quashed and set aside. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 20, 2007
Awasthi